

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>MARK POST,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL ACTION NO. 07-0290-CG-B</b>
	)	
<b>PHILLIPS CONSTRUCTION &amp;</b>	)	
<b>TRUCKING, LLC., KEVIN PHILIPS,</b>	)	
<b>CHARLES DONALD PHILLIPS</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER**

This matter is before the court on the Report and Recommendation of the Magistrate Judge, dated November 14, 2007 (Doc. 40), and the objection thereto of defendant Kevin Phillips. (Doc. 44). The Magistrate Judge recommended that a default be entered against defendant Phillips Construction & Trucking, LLC (“Phillips Construction”) for its failure to comply with this court’s orders. (Doc. 40). Upon a de novo review of those portions of the report and recommendation to which objection is made, the court agrees with the findings of the Magistrate and finds that default should be entered as to Phillips Construction.

Upon the withdrawal of its counsel, Phillips Construction was granted until July 20, 2007, to obtain new counsel, as corporations are prohibited from appearing in federal court pro se. (Doc. 13). Phillips Construction failed to obtain counsel as ordered<sup>1</sup> and also failed to appear at a conference set on August 31, 2007, to show cause why defendant failed to comply with the court’s order. Defendant was then ordered to show cause, on or before September 20, 2007, why a default judgment should not be entered against it due to its repeated failure to

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<sup>1</sup> Kevin Phillips filed a pro se response to a motion on behalf of Phillips Construction on July 23, 2007. (Doc. 17).

adhere to orders of this court. (Doc. 23). Copies of the show cause orders that were mailed to Kevin Phillips and Phillips Construction were returned as “unclaimed” and no response was filed. (Docs. 27, 28, 34 and 35).

The objection, filed by Kevin Phillips, pro se, states that Phillips Construction is no longer in existence and has been out of business since May 2007. Mr. Phillips states that he filed personal bankruptcy and that all of the corporations assets had been in his name personally. A review of the bankruptcy court filings in the Southern District of Alabama reveals that Kevin Phillips filed for relief under Chapter 7 of the Bankruptcy Code on June 8, 2007. Case No: 07-11546. The estate was fully administered as a no-asset case on January 10, 2008. The court notes that the bankruptcy petition listed plaintiff, Mark Post, as an unsecured creditor holding a claim in the amount of \$22,000.00 for “2005 monies owed.” The petition is only for the personal bankruptcy of Kevin Phillips and does not list Phillips Construction as a debtor, alias or d/b/a. There is no indication that Phillips Construction has ever filed bankruptcy. As such, the court finds that default should be entered against Phillips Construction. Phillips Construction failed to comply with the court’s orders directing it to secure counsel, to appear for the conference on August 31, 2007, and to respond to the show cause order issued on September 4, 2007. The court agrees that no action, short of entry of default, will suffice.

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a de novo determination of those portions of the report and recommendation to which objection is made, the report and recommendation of the Magistrate Judge is **ADOPTED** as the opinion of this court. The Clerk is hereby **DIRECTED** to enter a **DEFAULT** against **Phillips Construction & Trucking, LLC**.

In light of Kevin Phillips having filed Chapter 7 bankruptcy in 2007 listing plaintiff as a creditor, the court **FURTHER ORDERS** plaintiff, **Mark Post** to **SHOW CAUSE**, on or before **May 30, 2008**, why his claims against defendant Kevin Phillips should not be dismissed.

**DONE and ORDERED** this the 16<sup>th</sup> day of May, 2008.

/s/ Callie V. S. Granade

CHIEF UNITED STATES DISTRICT JUDGE